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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,971	02/02/2004	Benny Madsen	11602.00.0012	9127
23418 7590 07/13/2007 VEDDER PRICE KAUFMAN & KAMMHOLZ 222 N. LASALLE STREET CHICAGO, IL 60601				
			EXAMINER SIDDIQUI, SAQIB JAVAID	
			ART UNIT 2117	PAPER NUMBER
			MAIL DATE 07/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/769,971	Applicant(s) MADSEN ET AL.	
	Examiner Saqib J. Siddiqui	Art Unit 2117	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 12-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 12-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response was received and entered March 16, 2007.

- Claims 1-9 and 12-13 are pending
- Claims 1 and 12 have been amended
- Claims 10-11 and 14-15 are canceled

Response to Amendment

Applicant's arguments and amendments with respect to claims 1-15 filed March 16, 2007 have been fully considered but they are not persuasive. The Examiner would like to point out that this action is made final (See MPEP 706.07a).

Applicant contends that prior art of record Sako et al. US Pat no. 4,819,236 does not teach frequency conversion means for frequency up-converting said retrieved digital transmission signal. The Examiner respectfully disagrees.

Sako et al. teaches "The motor 21 is driven in a manner such that the phase (frequency) of the speed reference signal corresponding to the transmission rate of the inputted data and that of the frequency signal generated by the frequency generator 22 coincide with each other, and thereby the disc 11 is rotated at a rotational speed in synchronism with the transmission rate of the inputted data.

The signal indicative of the transmission rate of the data from the signal generator circuit 36 is supplied to the ECC encoder 34 and then recorded on the disc 11 as a portion of the supplementary data SUPD. Also recorded as a portion of the supplementary data SUPD are the sampling frequency and the bit number forming one word length of the data....

The digital signal reproduced from the disc 11 by an optical reproducing head (not shown) is supplied to a reproducing means 41 to be demodulated. The digital signal from the reproducing means 41 is then supplied to a supplementary data decoder 46 wherein the signal indicative of the transmission rate, recorded in the supplementary data area of each sector, is decoded. A speed reference signal generator circuit 47 is now supplied with the decoded signal indicative of the transmission rate, allowing a corresponding speed reference signal to be generated. The speed reference signal in turn is supplied to the phase comparator circuit 23 through a playback terminal side PB of the switch 26. Thus, the disc 11 is rotated at a rotational speed in synchronism with the transmission rate of the recorded data.

The speed reference signal for controlling the rotation of the disc upon playback or reproduction can be generated by previously reading, prior to the data reproduction, the data indicative of the transmission rate which is recorded in the directory area of the disc. Moreover, if the transmission rate recorded on the disc is known by a memory or the like, it is of course possible to manually change the speed reference signal.”
(columns 7-8, lines 54-35).

The data being retrieved to produce a reference transmission signal is being generated according to a certain transmission rate (frequency). This transmission rate can be of a higher frequency and can also be manually changed to a higher frequency. Therefore, by rotating at a certain speed the apparatus in Sako et al. is generating a reference signal according to a desired frequency, which could be a higher frequency.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-9 and 12-13 are rejected under 35 U.S.C. 102 (b) as being fully anticipated by Sako et al. US Pat no. 4,819,236.

As per claim 1:

Sako et al. teaches a method for generating a reference transmission signal for use in testing a communications system (Figure 4), comprising capturing a data packet transmission signal containing a plurality of reference data (Figure 4 # 31A & 31D); digitizing said data packet transmission signal (Figure 4 # 32); retrieving at least a selected portion of said plurality of reference data from said digitized data packet transmission signal to produce a plurality of retrieved data (Figure 4, #33); modulating a carrier signal with said plurality of retrieved data to produce a digital transmission signal (Figure 4 # 35); and storing said digital transmission signal following said modulating of said carrier signal and prior to a use of said digital transmission signal in producing said reference transmission signal for transmission and demodulation (Figure 4 # 11); retrieving said stored transmission signal; and frequency up-converting said retrieved digital transmission signal to produce said reference transmission signal (columns 7-8, lines 54-35).

As per claim 2:

Sako et al. teaches the method of claim 1 as rejected above, wherein said capturing a data packet transmission signal containing a plurality of reference data comprises receiving said data packet transmission signal as an analog signal (Figure 4 # 31A).

As per claim 4:

Sako et al. teaches the method of claim 1 as rejected above, wherein said capturing a data packet transmission signal containing a plurality of reference data comprises receiving said data packet transmission signal as a wired signal (column 6, lines 30-60).

As per claim 5:

Sako et al. teaches the method of claim 1 as rejected above, wherein said retrieving at least a selected portion of said plurality of reference data from said digitized data packet transmission signal to produce a plurality of retrieved data comprises demodulating at least a selected portion of said digitized data packet transmission signal to produce a plurality of demodulated data (column 8, lines 2-45).

As per claim 6:

Sako et al. teaches the method of claim 1 as rejected above, wherein said retrieving at least a selected portion of said plurality of reference data from said digitized data packet transmission signal to produce a plurality of retrieved data comprises decoding at least a selected portion of said digitized data packet transmission signal to produce a plurality of decoded data (Figure 4 # 42).

As per claim 7:

Sako et al. teaches the method of claim 1 as rejected above, wherein said modulating a carrier signal with said plurality of retrieved data to produce a digital transmission signal comprises encoding said carrier signal with said plurality of retrieved data (Figure 4 # 34).

As per claim 8:

Sako et al. teaches the method of claim 1 as rejected above, wherein said storing said digital transmission signal comprises storing said digital transmission signal in memory (Figure 4 # 11).

As per claim 9:

Sako et al. teaches the method of claim 1 as rejected above, further comprising modifying one or more selected bits of said plurality of retrieved data prior to said modulating a carrier signal with said plurality of retrieved data to produce a digital transmission signal (column 7, lines 5-50).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable in view of Sako et al. US Pat no. 4,819,236.

As per claim 3:

Sako et al. substantially teaches a method for generating a reference transmission signal for use in testing a communications system (Figure 4), comprising capturing a data packet transmission signal containing a plurality of reference data (Figure 4 # 25); digitizing said data packet transmission signal (Figure 4 # 26); retrieving at least a selected portion of said plurality of reference data from said digitized data packet transmission signal to produce a plurality of retrieved data (Figure 4, #27-31, column 5, lines 25-41); modulating a carrier signal with said plurality of retrieved data to produce a digital transmission signal (Figure 4 # 32, column 5, lines 35-42); and storing said digital transmission signal (Figure 4 # 28 & 38).

Sako et al. does not explicitly mention transmitting the packet wirelessly, however it would have been obvious to one having ordinary skill in the art at the time the invention was made to assume that the signal being received could be a wireless packet since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

As per claims 12-13:

These claims are directed to a method of the system of Claims 1-9. Sako et al. as stated above, teaches the system as set forth in Claims 1-9. Therefore, Sako et al. also teaches, either alone or in combination as stated above, the apparatus as set forth in claims 12-13.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

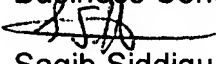
Art Unit: 2117

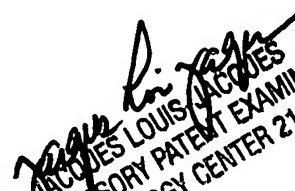
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saqib J. Siddiqui whose telephone number is (571) 272-6553. The examiner can normally be reached on 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacques Louis-Jacques can be reached on (571) 272-6962. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).


Saqib Siddiqui
Art Unit 2138
05/16/2007


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